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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,388	01/09/2004	Kang-Ping Lin	MR2561-137	6089
4586 7590 01/16/2008 ROSENBERG, KLEIN & LEE 3458 ELLICOTT CENTER DRIVE-SUITE 101 ELLICOTT CITY, MD 21043			EXAMINER KAHELIN, MICHAEL WILLIAM	
			ART UNIT 3762	PAPER NUMBER
			MAIL DATE 01/16/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/753,388

Applicant(s)

LIN ET AL.

Examiner

Michael Kahelin

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-6,13-18 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6,13-18 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/2/2007 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 1, 2, and 4-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, the right and left upper, lower, and middle "gelless electrodes" are unclear because it appears that the upper, lower and middle electrodes are a single electrode. It is suggested to claim these elements as a right (and left) upper (and lower and middle) "gelless electrode *portion*."

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless—

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 13, 15, 18, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Castelli (US 5,713,365, hereinafter "Castelli").

6. In regards to claim 13, Castelli discloses a device for measuring ECG (col. 1, line 37) comprising right and left finger gelled electrodes distant from the edges (7 and 8) on the upper surface (Fig. 1), an information display on the top surface (5), and a calculation system within the shell (3).

7. In regards to claim 15, the electrodes are made of conductive metal (col. 2, line 4).

8. In regards to claim 18, the calculation system comprises a pre-signal amplify circuit (Fig. 3, portion of circuit left of "Vm(t)"), an electrocardio signal amplify/filter circuit (Fig. 3, portion of circuit right of "Vm(t)"), an A/D converter (col. 2, line 17), and a CPU (22), wherein the calculation system displays results on the information display "continuously" over at least one clock cycle (col. 3, line 21).

9. In regards to claim 21, the device comprises a cover (2).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 14, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Castelli. Castelli discloses the essential features of the claimed invention except for providing a top surface having at least one button; providing electrodes made of conductive rubber; or displaying ST segment, QRS interval, and heart beat rate. It is well known in the electrophysiology arts to provide ECG monitors having a top surface having at least one button to provide the predictable result of modifying various operating parameters; providing electrodes made of conductive rubber to provide the predictable results of providing an acquisition means that is durable and pliable; and displaying various parameters such as ST segment, QRS

interval, and heart beat rate to provide the predictable result of accurately determining a patient's heart performance. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Castelli's invention by providing an ECG monitor having a top surface having at least one button to provide the predictable result of modifying various operating parameters; providing electrodes made of conductive rubber to provide the predictable results of providing an acquisition means that is durable and pliable; and displaying various parameters such as ST segment, QRS interval, and heart beat rate to provide the predictable result of accurately determining a patient's heart performance.

***Allowable Subject Matter***

13. Claims 1, 2, and 4-6 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Response to Arguments***

14. Applicant's arguments with respect to claims 13, 15, 18, and 21 have been considered but are moot in view of the new ground(s) of rejection, necessitated by amendment.

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### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Kahelin whose telephone number is (571) 272-8688. The examiner can normally be reached on M-F, 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MWK

*[Handwritten signature]*  
4/14/08

GEORGE R. EVANIS  
PRIMARY EXAMINER

1/14/08